



**TRURO AND PENWITH  
COLLEGE CORPORATION**



**CODE OF CONDUCT  
FOR  
CORPORATION AND  
COMMITTEE MEMBERS**

Approved: 25 June 2014



## CONTENTS

	Page
Code of Conduct for Corporation and Committee Members	1
Schedule - List of source documents	13
Appendix 1 - The Seven Principles of Public Life	14
Appendix 2 - Six Core Principles of Good Governance	15
Appendix 3 - Summary of main responsibilities of Corporation Members under the Articles of Government	17
Appendix 4 - Summary of main responsibilities of the Principal and the Clerk under the Articles of Government	19
Appendix 5 - Summary of main provisions of the Financial Memorandum with the SFA	20
Appendix 6 - Summary of the Statutory Powers of the Corporation	24
Appendix 7 - Personal Liability of Governors	26

## **CODE OF CONDUCT FOR CORPORATION AND COMMITTEE MEMBERS**

### **1. INTRODUCTION**

- 1.1 This Code is intended as a guide, to indicate the standards of conduct and accountability which are expected of Corporation and Committee Members, to enable them to understand their legal and ethical duties and to assist them both in carrying out those duties and in their relationship with the Corporation and Principal as the Chief Executive. This Code therefore is aimed at promoting effective, well informed and accountable college governance, and is not intended to be a definitive or authoritative statement of the law or good practice.
- 1.2 In addition to this Code, Members are recommended to familiarise themselves with the source documents listed in the Schedule.
- 1.3 If a Member is in doubt about the provisions of this Code or any of the source documents, the Clerk should be consulted and, if necessary, professional advice should be obtained. However, ultimate responsibility for the appropriateness of conduct as a Corporation or Committee Member and for any act or omission in that capacity rests with the individual Member.
- 1.4 This Code applies to every committee or working party of the Corporation and to every subsidiary company or joint venture of the College to which Corporation Members may be appointed.
- 1.5 By accepting appointment to the Corporation or a Committee, each Member agrees to accept the provisions of this Code.

### **2. INTERPRETATION**

In this Code:-

- 2.1 'College' means Truro and Penwith College;
- 2.2 'College Mission Statement' means the statement set out at paragraph 3.1 of this Code or such other mission statement as may be agreed by the Corporation from time to time;
- 2.3 'College Core Values' means those Core Values set out at paragraph 3.2 of this Code or such other core values as may be agreed by the Corporation from time to time, for example in a Public Value Statement;
- 2.4 'Corporation' means the further education corporation which was established for the purpose of conducting the College;
- 2.5 'Corporation Member/Member', 'Chair', 'Principal' and 'Clerk' mean respectively the Member of the Corporation or a Member of a Committee of the Corporation,

the Chair of the Corporation, the Principal of the College and the Clerk of the Corporation;

- 2.6 'DBIS' means the Department for Business, Innovation and Skills;
- 2.7 'EFA' means the Education Funding Agency or any successor body;
- 2.8 'Foundation Code' means the English Colleges' Foundation Code issued by the Association of Colleges in November 2011;
- 2.9 'SFA' means the Skills Funding Agency or any successor body;
- 2.10 all other definitions have the same meanings as given in the College's Instrument and Articles of Government; and
- 2.11 words importing one gender import any gender.

### 3. **AIMS AND VALUES**

- 3.1 The purpose of the College is to provide the best possible learning experience, leading to the highest possible level of achievements by our students. The College seeks to enhance the social, economic and physical wellbeing of the community it serves. Socially, the College promotes inclusion and opposes discrimination. By developing positive action strategies and policies it enables all residents of Cornwall equal access to the College facilities and activities. The College values every educational aim of every student equally and seeks to raise the aspirations of its students and staff so that each may make the maximum contribution to the community. Economically, the College supports local businesses and provides a broad range of learning to maximise the skills and knowledge of students. It engages with local employers to meet the needs of businesses and non-commercial partners. The College understands its environmental responsibilities, actively promotes a sustainable approach to its activities and encourages community use of its facilities.
- 3.2 The College Mission Statement together with the corporate objectives of the College agreed by the Corporation from time to time seek to encapsulate the core purposes and aims of the College. Corporation and Committee Members, should have due regard to these purposes and aims and to the Core Values when conducting the business of the Corporation and considering the activities and proposed activities of the College.
- 3.3 The Corporation recognises its obligations to all those with whom it and/or the College have dealings, including students, employees, suppliers, other educational institutions and the wider community. In particular, the Corporation is committed to:
  - having close regard to the voice of the learner;

- combating any discrimination within the College on the grounds of the characteristics protected by the Equality Act 2010;
- engaging with the community which the College serves in order to understand and meet its needs

3.4 The Corporation is also committed to ensuring that it conducts its business in accordance with the highest ethical standards as set out in more detail in this Code.

#### 4. **DUTIES**

4.1 Corporation and Committee Members owe a fiduciary duty to the College. This means that they should show it the highest loyalty and act in good faith in its best interests. Each Member should act honestly, diligently and (subject to the provisions appearing in paragraph 10 of this Code relating to collective responsibility) independently. The actions of Members should promote and protect the good reputation of the College and the trust and confidence of those with whom it deals.

4.2 Decisions taken by Corporation Members at meetings of the Corporation and its committees must not be for any improper purpose or personal motive. Decisions taken must always be for the benefit of the College, its students and staff and other users of the College and must be taken with a view to safeguarding public funds. Accordingly, Corporation Members must not be bound in their speaking and voting by mandates given to them by other bodies or persons (including but not limited to the bodies that elected them).

4.3 Corporation Members must observe the provisions of the College's Instrument and Articles of Government and in particular the duty to give immediate notice to the Clerk should they become disqualified from continuing to hold office and also the responsibilities given to the Corporation by the College's Articles of Government. Those responsibilities, including a list of "reserved" responsibilities which are so important that they must not be delegated, are set out in Appendix 3.

4.4 Members should comply with the Standing Orders and of the Corporation and its committees to ensure that the Corporation conducts itself in an orderly, fair, open and transparent manner. Corporation Members must keep those Standing Orders and terms of reference under periodic review.

4.5 Members should also have regard to the different, but complementary, responsibilities given to the Principal as the College's Chief Executive. The responsibilities given to the Principal by the College's Articles of Government are set out in Appendix 4. Whereas it is the Corporation's function to decide strategic policy and overall direction and to monitor the performance of the

Principal and any other senior post holders, it is the Principal's role to implement the Corporation's decisions, and to manage the College's affairs within the budgets and framework fixed by the Corporation. Members should work together so that the Corporation and the Principal as Chief Executive perform their respective roles effectively.

- 4.6 Corporation Members should refer to the Clerk for advice relating to the governance functions which are set out in Appendix 4 and have regard to the Clerk's independent advisory role.

## 5. **STATUTORY ACCOUNTABILITY**

- 5.1 Corporation Members are collectively responsible for observing the duties set out in the Financial Memorandum which the College has entered into with the SFA and the Funding Agreement which the College has entered into with the EFA as a condition of receiving public funds. A summary of some of the more important requirements of the Financial Memorandum and the Funding Agreement with the EFA is set out in Appendix 5.

- 5.2 Although the SFA is the main provider of funds to the College, Members should note that they are also responsible for the proper use of income derived from other sources, such as the Higher Education Funding Council for England (HEFCE) and the European Union (EU) and for the control and monitoring of expenditure of such income, in order to meet the requirements of the relevant funding body and public audit.

- 5.3 As accounting officer for the Agency, its Chief Executive is directly responsible and accountable to Parliament for ensuring that the uses to which the SFA puts its funds are consistent with the purposes for which the funds were given and comply with the conditions attached to them. The Principal, as accounting officer for the College, is also directly responsible and accountable to Parliament, through the Committee of Public Accounts, for the effective stewardship by the College of public funds. The Principal may be required to appear before the Committee of Public Accounts, alongside the Chief Executive of Skills Funding, to give an account of the use made by the College of such funds. The Corporation is accountable to Parliament for ensuring the financial health of the College, and to the Courts for ensuring that the College is conducted in accordance with the Education Acts and the general law.

## 6. **PUBLIC SERVICE VALUES**

Public service values are at the heart of the further education service. High standards of personal and corporate conduct, based on the principles set out in Appendices 1 and 2 of this Code, and the recognition that students and other users of the College's services come first, are a requirement of being a Corporation Member, and should underpin all decisions taken by the Corporation.

## 7. **SKILL, CARE AND DILIGENCE**

A Corporation Member should in all his or her work for the College exercise such skill as he or she possesses and such care and diligence as would be expected from a reasonable person in the circumstances. This will be particularly relevant when Corporation Members act as agents of the College, for example, when functions are delegated to a committee of the Corporation or to the Chair. Corporation Members should be careful to act within the terms of reference of any committees on which they serve.

## 8. **POWERS**

Corporation Members are responsible for taking decisions which are within the powers given to the Corporation by Parliament under sections 18 and 19 of the Further and Higher Education Act 1992, as amended. A summary of those powers is set out in Appendix 6. If a Member thinks that the Corporation is likely to exceed its powers by taking a particular decision, he or she should immediately refer the matter to the Clerk for advice.

## 9. **CONFLICTS OF INTEREST**

9.1 Like other persons who owe a fiduciary duty, Corporation Members should seek to avoid putting themselves in a position where there is a conflict (actual or potential) between their personal interests and their duties to the Corporation. They should not allow any conflict of interest to arise which might interfere with the exercise of their independent judgement.

9.2 Members are reminded that under the College's Instrument of Government and the general law they must disclose to the Corporation any direct or indirect financial interest they have, or may have, in the supply of work to the College or the supply of goods for the purposes of the College, or in any contract or proposed contract concerning the College, or in any other matter relating to the College or any other interest of a type specified by the Corporation in any matter relating to the College, or any duty which is material and which conflicts or may conflict with the interests of the Corporation.

9.3 If an interest of any kind (including an interest of a spouse or partner of a Member or of a close relative of the Member or his or her partner or spouse) is likely or would, if publicly known, be perceived as being likely to interfere with the exercise of a Member's independent judgement, then:-

9.3.1 the interest, financial or otherwise, should be reported to the Clerk;

9.3.2 the nature and extent of the interest should be fully disclosed to the Corporation before the matter giving rise to the interest is considered;



9.3.3 if the Corporation Member concerned is present at a meeting of the Corporation, or any of its committees, at which such supply, contract or other matter constituting the interest is to be considered, he or she should:-

(a) not take part in the consideration or vote on any question with respect to it and shall not be counted in the quorum for that meeting; and

(b) withdraw from that Corporation or committee meeting where required to do so by a majority of the Members of the Corporation or committee present at the meeting.

9.4 For the purposes of clause 9.3 "close relative" includes but is not limited to a father, mother, brother, sister, child, grandchild and step-father/mother/brother/sister/child.

9.5 Where it is proposed that the Corporation should grant a member a financial interest (such as a contract for the supply of goods or services) the Corporation must observe the requirements of the Charities Act 2011. The Corporation may wish to take legal advice before granting such an interest to a member.

9.6 Corporation and Committee Members must not receive gifts, hospitality or benefits of any kind from a third party which might be in breach of the Bribery Act 2010 and the College's anti-bribery policy and the College's policy on gifts and hospitality or be seen to compromise their personal judgement or integrity. Any offer or receipt of such gifts, hospitality or benefits should immediately be reported to the Clerk.

9.7 The Clerk will maintain a Register of Members' Interests which will be open for public inspection. Corporation Members must disclose routinely to the Corporation all business interests, financial or otherwise, which they may have, and the Clerk will enter such interests on the Register. Corporation Members must give sufficient details to allow the nature of the interests to be understood by enquirers. Members should inform the Clerk whenever their circumstances change and interests are acquired or lost. In deciding whether an interest should be disclosed, Members should have regard to the meaning given to "interest" in paragraphs 9.3 and 9.5 of this Code.

## 10. **COLLECTIVE RESPONSIBILITY**

The Corporation operates by Corporation Members taking majority decisions in a corporate manner at quorate meetings. Therefore, a decision of the Corporation, even when it is not unanimous, is a decision taken by the Corporation Members collectively and each individual Corporation Member has a duty to stand by it,

whether or not he or she was present at the meeting of the Corporation when the decision was taken.

If a Member disagrees with a decision taken by the Corporation, his or her first duty is to have any disagreement discussed and minuted. If the Corporation Member strongly disagrees, he or she should consult the Chair and, if necessary, then raise the matter with the Corporation when it next meets. If no meeting is scheduled, the Corporation Member should refer to the power of the Chair or any five Corporation Members under the College's Instrument of Government to call a special meeting and, if appropriate, exercise it, requesting the Clerk to circulate the Corporation Member's views in advance to the other Corporation Members. Alternatively, as a final resort, the Corporation Member may decide to offer his or her resignation from office, after consulting the Chair.

## **11. OPENNESS AND CONFIDENTIALITY**

- 11.1 Because of the Corporation's public accountability and the importance of conducting its business openly and transparently, Corporation Members should ensure that, as a general principle, students and staff of the College have free access to information about the proceedings of the Corporation. Accordingly, agendas, minutes and other papers relating to meetings of the Corporation are normally available for public inspection when they have been approved for publication by the Chair.
- 11.2 There will be occasions when the record of discussions and decisions will not be made available for public inspection; for example, when the Corporation considers sensitive issues or named individuals and for other good reasons. Such excluded items will be circulated in confidence to Corporation Members. Some confidential items are likely to be of a sensitive nature for a certain period of time only (for example information relating to a proposed commercial transaction or collaboration with another institution). Where possible, the Corporation should specify how long such items should be treated as confidential or, if this is not possible, such items should be regularly reviewed to consider whether the confidential status should be removed or whether the public interest in disclosure outweighs that confidential status and the item made available for public inspection. When considering such issues the Corporation Members must also consider the College's publication scheme issued under the Freedom of Information Act 2000
- 11.3 However, staff and student Corporation Members have no right of access to minutes dealing with matters in respect of which they are required to withdraw from meetings under the College's Instrument of Government.
- 11.4 It is important that the Corporation and its committees have full and frank discussions in order to take decisions collectively. To do so, there must be trust

between Corporation Members with a shared corporate responsibility for decisions. Corporation Members should keep confidential any matter which, by reason of its nature, the Chair or members of any committee of the Corporation are satisfied should be dealt with on a confidential basis.

- 11.5 Corporation Members should not make statements to the press or media or at any public meeting relating to the proceedings of the Corporation or its committees without first having obtained the approval of the Chair or, in his or her absence, the Vice Chair. It is unethical for Corporation Members publicly to criticise, canvass or reveal the views of other Corporation Members which have been expressed at meetings of the Corporation or its committees.

## 12. **COMPLAINTS**

- 12.1 In order to ensure that the affairs of the College are conducted in an open and transparent manner and that the College is accountable for its use of public funds but also to its employees, its students and the community it serves, it is important for there to be appropriate complaints procedures in place and for these to be well publicised. Members are reminded of their specific responsibility under the Articles of Government to make rules specifying the procedures in accordance with which employees may seek redress of any grievances relating to their employment, of the importance of having formal complaints procedures in place to handle issues raised by students, former students and third parties and of the legal requirement to have a whistle blowing procedure in place.

- 12.2 Under the SFA's Financial Memorandum with colleges (Part 2, clause 15.1), students, employers and other third parties have a right to make a complaint to the SFA in respect of the College or of any of its decisions. Corporation Members in particular are reminded that under the SFA's Procedure for dealing with complaints about Providers of Education and Training (April 2013) the SFA:

- *can* investigate complaints about quality or management of learning provision, undue delay or non-compliance with published procedures, poor administration by the Provider, equality and diversity issues (except where there is a more appropriate mechanism for dealing with the matter through the court or tribunals or other organisations), health and safety concerns and complaints made by learners following HE courses in FE colleges;
- *will not* investigate complaints about examination results or curriculum content where a more appropriate form of redress would be the examining body or Ofqual, individual employment issues, contractual disputes, save where this relates to a course funded by a 24+ Advanced Learning Loan, or matters subject of legal action or where legal proceedings are the most appropriate way of resolving the dispute.

### 13. **ATTENDANCE AT MEETINGS**

A high level of attendance at meetings of the Corporation and Committees is expected so that Members can perform their functions properly.

The Search and Governance Committee is responsible for monitoring attendance records and for taking action to address poor attendance as appropriate.

Members are expected to notify the Clerk of any extended period when they will be absent and unable to fulfil their duties as a governor or committee member. A sabbatical period may be approved by the Corporation, if appropriate.

### 14. **GOVERNANCE DEVELOPMENT**

- 14.1 The Corporation shall seek to ensure that all Corporation and Committee Members are appointed on merit, in accordance with an open selection procedure carried out by the Corporation's Search and Governance Committee, and are drawn widely from the community which the College serves so as to be representative of that community. The Corporation should have regard to the provisions relating to the membership of the Corporation in the College's Instrument of Government, the need to combat discrimination and to promote equality, and the need to make available a range of necessary skills and experience to ensure that the Corporation carries out its functions under the College's Articles of Government.
- 14.2 Members must obtain a thorough grounding in their duties and responsibilities by participating in the College's governance induction and training programmes, including regular refresher workshops and the governors' annual residential conference.
- 14.3 In order to promote more effective governance, Corporation Members will carry out an annual review of the performance by the Corporation of its duties and responsibilities, as part of a continuing and critical process of self evaluation.

## **SCHEDULE - List of source documents**

1. the College's Instrument of Government;
2. the College's Articles of Government;
3. the Standing Orders and terms of reference of the Corporation and its committees;
4. the Financial Memorandum entered into by the College with the SFA and the Funding Agreement entered into by the College with the EFA;
5. the College's Strategic Plan;
6. the College's policies that extend to Corporation members, including the College's policies on equal opportunities and freedom of speech, and the anti-bribery policy as required by the Bribery Act 2010, the College's policy on gifts and hospitality and the College's policy on safeguarding learners;
7. the principles laid down by the Committee on Standards in Public Life (Nolan Committee) for those holding public office, namely:
  - selflessness;
  - integrity;
  - objectivity;
  - accountability;
  - openness;
  - honesty; and
  - leadership

An extract from the report of the Nolan Committee setting out these Principles in more detail is set out at Appendix 1;

8. the Joint Audit Code of Practice issued by the SFA and the EFA;
9. the Foundation Code of Governance;
10. the information set out in the following Appendices.

## **APPENDIX 1**

### **The Seven Principles of Public Life**

The following is an extract from the Second Report of the Nolan Committee on Standards in Public Life, May 1996

#### **SELFLESSNESS**

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

#### **INTEGRITY**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

#### **OBJECTIVITY**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

#### **ACCOUNTABILITY**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

#### **OPENNESS**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

#### **HONESTY**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

#### **LEADERSHIP**

Holders of public office should promote and support these principles by leadership and example.

## APPENDIX 2

### Six Core Principles of Good Governance

The following is an extract from the Good Governance Standard for Public Services published by the Independent Commission on Good Governance in Public Services, January 2005

1. **Good governance means focusing on the organisation's purposes and on outcomes for citizens and service users**
  - 1.1 Being clear about the organisation's purposes and its intended outcomes for citizens and service users;
  - 1.2 Making sure that users receive a high quality service;
  - 1.3 Making sure that taxpayers receive value for money.
2. **Good governance means performing effectively in clearly defined functions and roles**
  - 2.1 Being clear about the functions of the governing body;
  - 2.2 Being clear about the responsibilities of the non-executives and the executive, and making sure that those responsibilities are carried out;
  - 2.3 Being clear about relationships between the governors and the public.
3. **Good governance means promoting values for the whole organisation and demonstrating the values of good governance through behaviour**
  - 3.1 Putting organisational values into practice;
  - 3.2 Individual governors behaving in ways that uphold and exemplify effective governance.
4. **Good Governance means taking informed, transparent decisions and managing risk**
  - 4.1 Being rigorous and transparent about how decisions are taken;
  - 4.2 Having and using good quality information, advice and support;
  - 4.3 Making sure that an effective risk management systems is in operation.

5. **Good governance means developing the capacity and capability of the governing body to be effective**

5.1 Making sure that appointed and elected governors have the skills, knowledge and experience they need to perform well;

5.2 Developing the capability of people with governance responsibilities and evaluating their performance, as individuals and as a group;

5.3 Striking a balance, in the membership of the governing body, between continuity and renewal.

6. **Good governance means engaging stakeholders and making accountability real**

6.1 Understanding formal and informal accountability relationships;

6.2 Taking an active and planned approach to dialogue with accountability to the public;

6.3 Taking an active and planned approach to responsibility to staff;

6.4 Engaging effectively with institutional stakeholders.



## **APPENDIX 3**

### **Summary of Main Responsibilities of Corporation Members under the Articles of Government**

Under the College's Articles of Government the Corporation shall be responsible:

- (a) for the determination and periodic review of the educational character and mission of the institution and for oversight of its activities;
- (b) for publishing arrangements for obtaining the views of staff and students on the determination and periodic review of staff and students of the educational character and mission of the institution and the oversight of its activities;
- (c) for approving the quality strategy of the institution;
- (d) for the effective and efficient use of resources, the solvency of the institution and the Corporation and for safeguarding their assets;
- (e) for approving annual estimates of income and expenditure;
- (f) for the appointment, grading, suspension, dismissal and determination of the pay and conditions of service of the holders of senior posts and the Clerk;
- (g) for setting a framework for the pay and conditions of service of all other staff; and
- (h) for setting the policy by which the tuition and other fees payable to the College are determined (subject to any terms and conditions attached to grants, loans or other payments paid or made by the SFA).

"Senior Post" means the post of Principal and such other senior posts as the Corporation may designate for the purposes of the Articles.

#### **Responsibilities which must not be delegated**

The Articles of Government prohibit the Corporation from delegating the following:-

- (a) the determination and periodic review of the educational character and mission of the institution;
- (b) the approval of the annual estimates of income and expenditure;
- (c) the responsibility for ensuring the solvency of the institution and the Corporation and the safeguarding of their assets;
- (d) the appointment of the Principal or holder of a senior post;

- (e) the appointment of the Clerk;
- (f) the modifying or revoking of the Articles of Government;
- (g) the consideration of the case for dismissal, of the Principal, the Clerk or the holder of a senior post unless such function is delegated to a committee of Members of the Corporation; and
- (h) the power to determine an appeal in connection with the dismissal of the Principal, the Clerk or the holder of a senior post unless such power is delegated to a committee of Members of the Corporation.

The Corporation may, from time to time, resolve to add other functions which must not be delegated to this list of "reserved" responsibilities.

## **APPENDIX 4**

### **Summary of main responsibilities of the Principal under the Articles of Government**

Under the College's Articles of Government the Principal shall be the Chief Executive of the College and shall be responsible for:

- (a) making proposals to the Corporation about the educational character and mission of the institution, and for implementing the decisions of the Corporation;
- (b) the determination, of the institution's academic activities and the determination of its other activities;
- (c) preparing annual estimates of income and expenditure, for consideration and approval by the Corporation, and the management of budget and resources within the estimates approved by the Corporation;
- (d) the organisation, direction and management of the institution and leadership of the staff;
- (e) the appointment, assignment, grading, appraisal, suspension, dismissal, and determination, within the framework set by the Corporation, of the pay and conditions of service of staff, other than the holders of senior posts or the Clerk; and
- (f) maintaining student discipline and, within the rules and procedures provided for within these Articles, suspending or expelling students on disciplinary grounds and expelling students for academic reasons.

### **Summary of main responsibilities of the Clerk under the Articles of Government**

Under the College's Articles of Government the Clerk shall be responsible for advising the Corporation with regard to:

- (a) the operation of its powers;
- (b) procedural matters;
- (c) the conduct of its business; and
- (d) matters of governance practice.

## **APPENDIX 5**

### **Summary of Main Provisions of the Financial Memorandum with the Skills Funding Agency**

#### **Purposes**

##### **Purpose**

The SFA issued a revised draft version of the financial memorandum for further education colleges, together with a version for sixth form colleges that recruit adult students, for comment in May 2013. At the same time EFA issued a draft funding agreement for further education colleges that provide EFA funded education for those under 19. The final versions of these documents came into force on 1 August 2013.

The SFA and EFA explained in a letter to the Association of Colleges that the proposed arrangements will ensure that both general FE and sixth form colleges have proper lines of financial accountability to the relevant funding body. Many general FE colleges also receive funding for provision for students aged under 18 from the EFA. Conversely, some sixth form colleges receive funding from the SFA for adult provision.

##### **Format**

The form of the documentation varies because of the different legal basis on which the SFA and EFA fund provision. The SFA provides funding under the Apprenticeships, Skills, Children and Learning Act 2009 on the basis of grant – in aid. Such grants are provided subjects to conditions set out in the Financial Memorandum. The EFA provides funding under the Education Act 2002. Such funding is not limited to provision by grant – in aid so the appropriate document is a Funding Agreement which is contractual in nature. The Funding Agreements which EFA will provide to colleges are broadly similar in nature to those that EFA has with academy schools.

While the EFA Funding Agreements are broadly similar to those previously in place with sixth form colleges, the new SFA Financial Memorandum for FE colleges (and its counterpart for sixth form colleges) is in a different format from the one used until recently. The SFA's Financial Memorandum has previously been in two separate parts, with the general conditions of grant in part 1 and conditions specific to the individual college in part 2. However, over time part 2 has itself become largely standardised, to deal with issues such as data protection, freedom of information, learner health and safety and so on. The replacement Financial Memorandum brings the two parts together into one document, with only the financial annexes differing between institutions, unless there is a particular need for special provisions specific to a particular institution.

The EFA Funding Agreements are structured in two parts. Part 1 is broadly similar to the former part 1 of the SFA Financial Memorandum. In the version of the EFA funding agreement for general FE and specialist colleges, this material is omitted, since EFA will take assurance from the equivalent provisions in these colleges' Financial Memoranda with SFA. For the same reason, the version of the Financial Memorandum which is now provided by the SFA to sixth form colleges omits those provisions which are central to the financial accountability arrangements, e.g. those setting out the responsibilities of

the governing body and of the accounting officer, the requirement to provide information, and the requirements in relation to financial reporting and audit. This is because the SFA will rely on equivalent provisions in the sixth form colleges' Funding Agreements with the EFA.

In practice, if a general FE college, receiving funding from both SFA and EFA, were to get into serious financial or quality difficulties, there would be liaison between the two funding bodies and regulatory action would be co-ordinated by the lead funding body, ie the SFA (for general FE colleges) and the EFA (for sixth form colleges).

There follows a commentary on the main provisions of the SFA Financial Memorandum for further education colleges.

## **Definitions**

It should be noted that references to public funds include funds provided by HEFCE as well as those provided by the SFA.

## **Statutory framework**

The conditions set out in the Financial Memorandum are intended to enable the Chief Executive of Skills Funding to carry out his functions under the Apprenticeships, Skills, Children and Learning Act 2009 (ASCLA). Note that ASCLA gives these functions to the holder of this post rather than to the SFA itself. The SFA has no separate legal status and will in due course become an agency of the Department for Business, Innovation and Skills (DBIS). The Chief Executive of Skills Funding (the "Chief Executive") has responsibilities as accounting officer to his or her department for ensuring that the use of funds which he/she receives from the Secretary of State is consistent with his/her statutory remit and any conditions imposed by the Secretary of State.

## **Responsibilities of a Governing Body**

The Financial Memorandum recognises that a Corporation is an independent body responsible for managing the college and ensuring its financial viability. However, the Corporation must inform the Chief Executive of any transaction that could jeopardise the college's financial viability and must also be able to demonstrate that all transactions achieve value for money for funds provided under the financial memorandum.

The governing body must appoint an accounting officer (expected to be the chief executive/principal of the college). There must be an accounting officer in place at all the times and the SFA must be informed of the accounting officer's name and position and who will discharge their various responsibilities if they are absent from the college for an extended period.

The accounting officer takes personal responsibility, which is not delegable, to ensure compliance with the Financial Memorandum and conditions of funding. The accounting officer may be required to appear before the Public Accounts Committee on matters relating to the Corporation's use of funds.

The accounting officer must advise the governing body if at any time in his/her opinion any action under consideration by the governing body is incompatible with the Financial

Memorandum. If the governing body resolves to continue with such action the accounting officer must inform the Chief Executive.

### **Allocation of funds**

The Chief Executive will allocate funds to the Corporation annually provided that he/she is satisfied that the Corporation is financially viable and able to deliver education of a reasonable quality meeting the needs of learners and employers and the Corporation has met the previous year's conditions of funding. The Corporation is free to spend its funding as it sees fit provided it fulfils the conditions of funding but funds must not be used to deliver provision in respect of which the Corporation has already received other funding, public or otherwise, unless agreed by the Chief Executive.

### **Capital transactions**

The Corporation must manage its property with regard to good practice guidance in the FE sector. It is no longer necessary to obtain approval of the Chief Executive to the disposal of land or buildings which had been acquired or developed with the help of capital grants from the SFA or previous associated bodies, but the Chief Executive must be notified in writing of such transactions and reserves the right to require repayment of some or all of the associated grant.

### **Financial reporting**

The Chief Executive specifies the information to be contained in the Corporation's financial statements. Audited financial statements must be provided to the Chief Executive within five months of the Corporation's year end. The Corporation must have an effective policy on risk management. The Corporation must notify the Chief Executive in writing if at any time there is a risk to the college's solvency and viability.

### **Audit**

The Corporation must appoint an audit committee and arrange to provide internal and financial statements audit, including regularity audit, in accordance with the Joint Audit Code of Practice.

The Corporation must investigate and report to the Chief Executive all significant cases of fraud or suspected fraud.

### **Payment to employees on termination of employment**

The Corporation must only make payments to employees on the termination of their employment for the purpose of meeting contractual obligations. Payments must be demonstrated to be regular, secure value for money and avoid spending funds on settlements where disciplinary action would have been more appropriate. Where employment claims are brought by a senior post holder it should take appropriate professional advice on any proposed settlement and the terms of the final agreement should be agreed by the governing body and brought to the attention of the financial statements auditors.

## **Provision of information**

The Chief Executive reserves the right to request information from the Corporation in order to exercise his responsibilities. The Corporation must inform the Chief Executive in writing of the vacating or filling of the positions of Chair of the governing body, Principal and Clerk.

## **Additional conditions of funding**

The Chief Executive reserves the right to impose additional conditions where he/she considers it necessary to secure the delivery of education and training of a reasonable quality or to require the Corporation to address concerns about its financial viability.

## **Repayment of funds**

In the case of a breach of the conditions of funding the Chief Executive reserves the right to require repayment of all or part of the funds.

## **Raising Standards, Feedback and Complaints**

The college must deliver the funded provision to an acceptable standard of quality and comply with the Performance Management Rules published by the Chief Executive. There is a set procedure for dealing with inadequate provision which may lead to issue of a Notice of Concern or ultimately a Notice of Withdrawal of Funding. We understand that these provisions are to be amended in the light of the BIS/DfE intervention policy now set out in *Rigour and Responsiveness in Skills*.

Colleges are expected to have acceptable procedures for gathering and acting upon feedback and complaints from learners and/or their representatives and employers and the wider community. These must be made available to those who may wish to complain. Where a complaint is not resolved satisfactorily the complainant must be informed of their right to complain to the Chief Executive.

## **Additional matters**

The Financial Memorandum now incorporates a number of other clauses on compliance matters such as health and safety, equal opportunities, data protection and freedom of information, and State Aid. These were formerly in Part 2 of the previous Financial Memorandum.

## **Interpretation**

Nothing in the Financial Memorandum shall require the Corporation to act in a manner which would cause the Corporation to cease to be a charity.

Colleges need to familiarise themselves with the detailed content of the new financial memorandum and funding agreement in the versions applicable to their type of college. However, despite the presentational differences in the documentation, colleges will find that the substance of the requirements that they need to meet is largely unchanged.

## **APPENDIX 6**

### **Summary of the Statutory Powers of the Corporation**

#### **PRINCIPAL POWERS**

Under section 18(1) of the Further and Higher Education Act 1992 a further education corporation may:-

- (a) provide further and higher education;
- (b) provide secondary education suitable to the requirements of persons who have attained the age of 14 years, or provide secondary education or participate in the provision of secondary education at a school (subject to the consultation with the appropriate local education authority); and
- (c) supply goods or services in connection with their provision of education.

These powers are known as the Corporation's "principal powers".

#### **SUPPLEMENTARY POWERS**

Under section 19 of the 1992 Act the Corporation may do anything which appears to it to be necessary or expedient for the purpose of or in connection with the exercise of any of the principal powers conferred by section 18 of the Act, including in particular the following powers:-

- (a) to acquire and dispose of land and other property;
- (b) to enter into contracts, including in particular:
  - (i) contracts for the employment of teachers and other staff for the purposes of or in connection with carrying on any activities undertaken in the exercise of the Corporation's principal powers; and
  - (ii) contracts with respect to the carrying on by the Corporation of any such activities;
- (c) to form, participate in forming or invest in a company or become a member of a charitable incorporated organisation;
- (d) to borrow such sums as the Corporation thinks fit for the purposes of carrying on any activities it has power to carry on or to meet any liability transferred to it under sections 23 to 27 of the 1992 Act (i.e. when the College achieved its corporate independence on 1st April 1993) and, in connection with such borrowing, the power to grant any mortgage, charge or other security in respect of any land or other property of the Corporation;



- (e) to invest any sums not immediately required for the purposes of carrying on any activities the Corporation has power to carry on;
- (f) to accept gifts of money, land or other property and apply it, or hold and administer it on trust for, any of those purposes;
- (g) to do anything incidental to the conduct of an educational institution providing further or higher education, including founding scholarships or exhibitions, making grants and giving prizes and
- (h) to provide advice or assistance to any other person where it appears to the Corporation to be appropriate for them to do so for the purpose of or in connection with the provision of education by the other person

The Corporation may also provide facilities of any description (including boarding accommodation and recreational facilities for students and staff and facilities to meet the needs of students having learning difficulties) which appear to be necessary or desirable for the purposes of or in connection with the carrying on of the principal powers.

The powers conferred by section 19 of the 1992 Act are known as “supplementary powers”.

## **APPENDIX 7**

### **Personal Liability of Governors and Practical Action to Reduce the Risks**

#### **Extent of liability**

Members of college corporations are not subject to the Companies or Insolvency Acts. In that sense their potential liability is lower than that of company directors, especially since the “wrongful trading” remedy does not apply to them.

However, Corporation members have a duty as charity trustees to act with skill and care to safeguard the assets of the College, and have a range of governance responsibilities (especially the requirement that they act within their statutory powers). These responsibilities may seem in certain respects more onerous than the duties of company directors, but please see the last two bullet points below.

The governance changes made by the Education Act 2011 do not per se increase the level of care required but they may lead to a college undertaking more complex operations (eg merger) with consequently greater risk. Further, in many such cases there will now be no involvement of SFA/EFA or the Secretary of State. These bodies will no longer be a target for possible litigation, so leaving the corporation potentially more exposed. Inevitably increased freedom comes at the price of greater responsibility. However, the basic responsibilities of corporation members are essentially unchanged. A governor with specialist expertise will be expected to show a level of skill and knowledge reflecting that expertise. However, no member of a corporation has individual responsibility for a particular area, the responsibility being collective. In any event the role of a governor, even one with specialist skill, is to provide strategic oversight rather than undertake operational management, which is the province of the college Principal/CEO.

No statutory insolvency regime applies to the majority of colleges, because they are statutory corporations regulated by the Education Acts. The responsibility in the Articles of Government for ensuring solvency is not defined and probably fixes Corporation members with no greater liability than what already exists under their fiduciary and governance duties. In relation to the position concerning property rights and liabilities on dissolution of a college corporation see the BIS information sheet circulated by the Association of Colleges in November 2012:

The duty to act “with good faith” imposes a strict and exacting standard and means that a Corporation member must act honestly and without ulterior motive.

Although the Skills Funding Agency and Education Funding Agency have substantial powers under the financial memorandum/funding agreement, they do not have powers equivalent to a receiver or administrator under company law.

There are certain practical steps which, if taken by Corporation members, should substantially reduce the risks of personal liability. Please see the following list of practical steps which can be taken.

There is a valuable protection made available to Corporation members of colleges by section 145 of the Learning and Skills Act 2000. This provides that if a Corporation member is found liable in civil legal proceedings in respect of something which was done or not done in the course of carrying out the duties of a Corporation member, that individual has the right to apply to the Court for relief from liability where the individual

has acted honestly and reasonably. In certain respects this protection could be said to be wider than that available to company directors.

There is a similar right to apply to the Charity Commission for relief from any liability as a charity trustee under section 191 of the Charities Act 2011. Corporation members will recall that compliance of sixth form college corporations with charity law is subject to monitoring by the DfE/EFA which is their designated "principal regulator". Compliance of FE college Corporations with charity law is monitored in the first instance by BIS/ SFA as the Secretary of State for Business, Innovation and Skills was designated principal regulator of further education colleges' charity law compliance from 1 September 2013.

## **Avoidance of Personal Liability**

### **Practical action**

It is very difficult to assess how often claims are made against individual governors. While we are not aware of any legal cases that have been reported, there may have been unreported cases, and even more likely that there have been claims settled by insurers on a confidential basis. We are aware of a small number of cases where such claims have been threatened even though ultimately not pursued. Accordingly, while it seems that claims against governors are infrequent, the possibility of such claims must be taken seriously, especially with the reduced involvement of DfE/EFA since the introduction of the 2012 governance "freedoms".

There are a number of practical steps which Corporation members can take to minimise the risk of personal liability. These steps include:-

- being aware of the limitations on the powers of the Corporation and of the need for such powers to be exercised reasonably, with regard to all relevant considerations and without members regarding themselves as bound by any commitments to other persons or bodies;
- being aware of the terms of reference of all committees;
- understanding fully the duties and responsibilities of the Corporation, especially the duties of monitoring and oversight of the College's strategic direction, financial health and quality of provision;
- being aware of the complementary, but different, responsibilities of the Principal/CEO to implement the decisions of the Corporation and organise, manage and direct the College as its chief executive and as its accounting officer;
- being aware in particular of the responsibility of the Principal/CEO and the senior management team to advise the Corporation, and of the role of the Clerk to Corporation to provide independent constitutional advice to the Corporation;
- ensuring that sufficient financial and other information is available to and properly considered by the Corporation on a regular basis;
- ensuring that at every stage the SFA/EFA are closely consulted, and all necessary approvals are obtained from it, in respect of decisions of a financial nature;
- ensuring that the Corporation takes professional advice wherever appropriate, including independent advice in accordance with the Corporation's policy on obtaining independent professional advice;

- ensuring that all personal, financial and other interests are declared and are routinely recorded in the Corporation's register of interests;
- ensuring that meetings of the Corporation and its committees are quorate and fully and properly minuted;
- ensuring that the audit committee operates in an independent, rigorous and proactive manner;
- ensuring that any functions of the Corporation which are non-delegable are not delegated and any delegable functions are delegated under the Corporation's specific authority;
- making any dissenting views known and ensuring that they are minuted;
- ensuring that adequate risk management arrangements are in place, and that appropriate risk management processes and practices are implemented and periodically reviewed, eg to create detailed audit trails for health and safety activities;
- ensuring that a directors' and officers' insurance policy is maintained in full force and effect with an appropriate level of cover. Insurance should very much be regarded as a safeguard of last resort, since it is not possible to insure against all liabilities.